

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ONDRA L. HARDMAN and U.S. POSTAL SERVICE,
ASHFORD WEST STATION, Houston, TX

*Docket No. 01-788; Submitted on the Record;
Issued October 11, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an injury while in the performance of duty.

On January 3, 2000 appellant, a 35-year-old letter carrier, filed a notice of occupational disease alleging that he sustained a herniated disc at L4-5 as a result of his federal employment.

By decision dated April 5, 2000, the Office of Workers' Compensation Programs denied appellant's claim based on his failure to establish a causal relationship between his claimed condition and his employment. Appellant subsequently requested a hearing, which was held on September 26, 2000.

In a decision dated November 14, 2000, the Office hearing representative found that appellant failed to demonstrate a causal relationship between his claimed condition and his employment exposure. Accordingly, the Office hearing representative denied appellant's claim for compensation.

On December 12, 2000 appellant filed a request for reconsideration. Appellant also filed an appeal with the Board on January 24, 2001. The Office subsequently issued a decision dated February 13, 2001 denying modification of the prior decision dated November 14, 2000.

The Board finds that the Office did not have the authority to issue its February 13, 2001 decision denying modification. The Board and the Office may not simultaneously exercise jurisdiction over the same issue in a case.¹ At the time the Office issued its February 13, 2001 decision, appellant had already filed an appeal with the Board regarding the Office hearing representative's November 14, 2000 decision. Inasmuch as the Board had obtained jurisdiction over the case on January 24, 2001, the Office lacked the authority to issue the February 13, 2001

¹ *Arlonia B. Taylor*, 44 ECAB 591 (1993).

decision denying modification. Accordingly, the Office's February 13, 2001 decision is set aside as null and void.²

The Board has given careful consideration to the issue involved, the parties' contentions on appeal and the entire case record. The Board finds that the November 14, 2000 decision of the hearing representative of the Office is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.³

The November 14, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 11, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

² *Terry L. Smith*, 51 ECAB___ (Docket No. 97-808, issued November 29, 1999).

³ In an occupational disease claim, in order to establish that an injury was sustained in the performance of duty, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the appellant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. *Victor J. Woodhams*, 41 ECAB 345 (1989).